

SECOND REGULAR SESSION

HOUSE BILL NO. 2020

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES REID, SELBY, LOWE, BOUCHER (Co-sponsors), MONACO,
ROBIRDS, HOLT, HILGEMANN, HOSMER AND HARLAN.

Read 1st time February 21, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3703L.011

AN ACT

To repeal sections 407.560, 407.565, 407.567, 407.571, 407.573, 407.577 and 407.579, RSMo,
and to enact in lieu thereof eleven new sections relating to motor vehicle safety and
repair, with penalty provisions and an effective date.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 407.560, 407.565, 407.567, 407.571, 407.573, 407.577 and 407.579,
2 RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections
3 407.560, 407.565, 407.567, 407.568, 407.570, 407.571, 407.573, 407.577, 407.579, 407.580 and
4 407.581, to read as follows:

407.560. As used in sections 407.560 to [407.579] **407.581**, the following terms mean:

2 (1) "Collateral [charges] **costs**", [those additional charges to] **expenses incurred by a**
3 consumer [not directly attributable to a manufacturer's suggested retail price label for the new
4 motor vehicle. For the purposes of sections 407.560 to 407.579, "collateral charges" includes
5 all sales tax, license fees, registration fees, title fees and motor vehicle inspections] **in**
6 **connection with the repair of a nonconformity, including the costs of obtaining alternative**
7 **transportation;**

8 (2) "Comparable motor vehicle", an identical or reasonably equivalent motor vehicle;

9 (3) "Consumer", **any of the following:**

10 (a) The purchaser, other than for the purposes of resale, of a new motor vehicle **from a**
11 **dealer**, primarily used for personal, family, or household purposes[, and];

12 (b) Any person to whom such new motor vehicle is transferred for the same purposes

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended
to be omitted in the law.**

13 during the duration of an express warranty applicable to such new motor vehicle[, and];

14 (c) Any other person entitled by the terms of such warranty to enforce the obligations of
15 the warranty; or

16 (d) **A person who leases a motor vehicle from a motor vehicle lessor under a written
17 lease;**

18 (4) **"Dealer", any motor vehicle dealer as defined in subdivision (7) of subsection
19 1 of section 301.550, RSMo;**

20 (5) **"Early termination cost", any expense or obligation a motor vehicle lessor
21 incurs as a result of both the termination of a written lease before the termination date set
22 forth in that lease and the return of a motor vehicle to a manufacturer pursuant to section
23 407.567. The term includes any penalty for prepayment under a finance arrangement;**

24 (6) **"Early termination savings", any expense or obligation a motor vehicle lessor
25 avoids as a result of both the termination of a written lease before the termination date set
26 forth in that lease and the return of a motor vehicle to a manufacturer pursuant to section
27 407.567. The term includes any interest charge the motor vehicle lessor would have paid
28 to finance the motor vehicle or, if the lessor does not finance the motor vehicle, the
29 difference between the total amount for which the lease obligates the consumer during the
30 period of the lease term remaining after the early termination and the present value of that
31 amount at the date of the early termination;**

32 (7) **"Express warranty", any written affirmation of the fact or promise made by a
33 manufacturer to a consumer in connection with the sale of new motor vehicles which relates to
34 the nature of the material or workmanship or will meet a specified level of performance over a
35 specified period of time;**

36 (8) **"Lessee", any consumer who leases a motor vehicle pursuant to a written lease
37 which provides that the lessee is responsible for repairs to such motor vehicle;**

38 (9) **"Lessor", a person who holds title to a motor vehicle leased to a lessee, or who
39 holds the lessor's rights, under a written lease;**

40 [(5)] (10) **"Manufacturer", [any person engaged in the manufacturing or assembling of
41 new motor vehicles as a regular business] any person, firm or corporation, whether resident
42 or nonresident, who manufactures, or assembles motor vehicles for sale or distribution in
43 this state; in the case of motor vehicles not manufactured in the United States, the term
44 manufacturer shall also include any person, firm or corporation who is engaged in the
45 business of importing motor vehicles;**

46 [(6)] (11) **"New motor vehicle", any motor vehicle being transferred for the first time
47 from a manufacturer, distributor or new vehicle dealer, which has not been registered or titled
48 in this state or any other state and which is offered for sale, barter or exchange by a dealer who**

49 is franchised to sell, barter or exchange that particular make of new motor vehicle. The term
50 "new motor vehicle" shall include only those vehicles propelled by power other than muscular
51 power, but the term shall not include vehicles used as a commercial motor vehicle, off-road
52 vehicles, mopeds, motorcycles or recreational motor vehicles as defined in section 301.010,
53 RSMo, except for the chassis, engine, powertrain and component parts of recreational motor
54 vehicles. The term "new motor vehicle" shall also include demonstrators or lease-purchase
55 vehicles as long as a manufacturer's warranty was issued as a condition of sale[.];

56 **(12) "Nonconformity", a condition or defect which substantially impairs the use,**
57 **value or safety of a motor vehicle, and is covered by an express warranty applicable to the**
58 **motor vehicle or to a component of the motor vehicle, but does not include a condition or**
59 **defect which is the result of abuse, neglect or unauthorized modification or alteration of**
60 **the motor vehicle by a consumer;**

61 **(13) "Safety recall", a program whereby a manufacturer undertakes to provide**
62 **notice to consumers of a problem with a motor vehicle which poses safety risks to**
63 **consumers or others, and whereby the manufacturer remedies the risk by replacing or**
64 **repairing the motor vehicle subject to the recall;**

65 **(14) "Technical service bulletin", information issued by a manufacturer to dealers**
66 **to assist them in identifying and repairing problems discovered in new motor vehicles**
67 **which may improve performance or reduce future breakdown problems with the vehicle.**
68 **The term does not include safety recalls, owner notification programs or service**
69 **campaigns.**

407.565. For the purposes of sections 407.560 to [407.579] **407.581**, if a new motor
2 vehicle does not conform to all applicable express warranties, and the consumer reports the
3 nonconformity to the manufacturer, [or] its agent, **the new motor vehicle lessor or any of the**
4 **manufacturer's authorized motor vehicle dealers and makes the new motor vehicle**
5 **available for repair** during the term of such express warranties, or during the period of [one
6 year] **eighteen months** following the date of original delivery of the new motor vehicle to the
7 consumer, **or before the new motor vehicle's odometer accurately indicates that the vehicle**
8 **has traveled eighteen thousand miles**, whichever period expires earlier, the manufacturer, [or]
9 its agent, **or any authorized dealer**, shall make such repairs as are necessary to conform the new
10 vehicle to such express warranties, notwithstanding the fact that such repairs are made after the
11 expiration of such term or such [one-year] **eighteen-month or eighteen-thousand-mile** period.

407.567. 1. If, **after a reasonable attempt to repair, the nonconformity is not**
2 **repaired**, the manufacturer, through its authorized dealer or its agent, [cannot conform the new
3 motor vehicle to any applicable express warranty by repairing or correcting any default or
4 condition which impairs the use, market value, or safety of the new motor vehicle to the

5 consumer after a reasonable number of attempts, the manufacturer shall, at its option, either
6 replace the new motor vehicle with a comparable new vehicle acceptable to the consumer, or
7 take title of the vehicle from the consumer and refund to the consumer the full purchase price,
8 including all reasonably incurred collateral charges, less a reasonable allowance for the
9 consumer's use of the vehicle. The subtraction of a reasonable allowance for use shall apply
10 when either a replacement or refund of the new motor vehicle occurs.

11 2. Refunds shall be made to the consumer and lienholder of record, if any, as their
12 interests may appear.] **shall, at the direction of the consumer, do one of the following:**

13 (1) **Accept return of the motor vehicle and replace the motor vehicle with a**
14 **comparable new motor vehicle and refund any collateral costs;**

15 (2) **Accept return of the motor vehicle and refund to the consumer and any holder**
16 **of any perfected security interests in the consumer's motor vehicle, as their interests may**
17 **appear, the full purchase price plus any sales tax, finance charge, amount paid by the**
18 **consumer at the point of sale and collateral costs, less a reasonable allowance for use.**
19 **Pursuant to this section, a reasonable allowance for use may not exceed the amount**
20 **obtained by multiplying the full purchase price of the motor vehicle by a fraction, the**
21 **denominator of which is one hundred thousand or, for a motorcycle, twenty thousand, and**
22 **the numerator of which is the number of miles the motor vehicle was driven before the**
23 **consumer first reported the nonconformity to the motor vehicle dealer;**

24 (3) **With respect to a lessee, accept return of the motor vehicle, refund to the motor**
25 **vehicle lessor and to any holder of any perfected security interests in the motor vehicle, as**
26 **their interests may appear, the current value of the written lease and refund to the**
27 **consumer the amount the consumer paid under the written lease plus any sales tax and**
28 **collateral costs, less a reasonable allowance for use. For purposes of this subsection, the**
29 **current value of the written lease equals the total amount for which that lease obligates the**
30 **consumer during the period of the lease remaining after its early termination, plus the**
31 **motor vehicle dealer's early termination costs and the value of the motor vehicle at the**
32 **lease expiration date if the lease sets forth that value, less the motor vehicle lessor's early**
33 **termination savings. A reasonable allowance for use may not exceed the amount obtained**
34 **by multiplying the total amount for which the written lease obligates the consumer by a**
35 **fraction, the denominator of which is one hundred thousand and the numerator of which**
36 **is the number of miles the consumer drove the motor vehicle before first reporting the**
37 **nonconformity to the manufacturer, motor vehicle lessor or motor vehicle dealer.**

38 2. **To receive a comparable new motor vehicle or a refund due pursuant to**
39 **subdivision (1) or (2) of subsection 1 of this section, a consumer shall offer to the**
40 **manufacturer of the motor vehicle having the nonconformity to transfer title to that motor**

41 vehicle to that manufacturer. No later than thirty days after that offer, the manufacturer
42 shall provide the consumer with the comparable new motor vehicle or refund. When the
43 manufacturer provides the new motor vehicle or refund, the consumer shall return the
44 motor vehicle having the nonconformity to the manufacturer and provide the
45 manufacturer with the certificate of title and all endorsements necessary to transfer title
46 to the manufacturer.

47 3. To receive a refund due pursuant to subdivision (3) of subsection 1 of this
48 section:

49 (1) A lessee shall offer to the manufacturer of the motor vehicle having the
50 nonconformity to return that motor vehicle to that manufacturer. No later than thirty days
51 after that offer, the manufacturer shall provide the refund to the consumer. When the
52 manufacturer provides the refund, the consumer shall return the motor vehicle having the
53 nonconformity to the manufacturer; and

54 (2) A lessor shall offer to the manufacturer of the motor vehicle having the
55 nonconformity to transfer title of that motor vehicle to the manufacturer. No later than
56 thirty days after that offer, the manufacturer provides the refund, the motor vehicle lessor
57 shall provide to the manufacturer the certificate of title and all endorsements necessary to
58 transfer title to the manufacturer.

59 4. No person may enforce the lease against the consumer after the consumer
60 receives a refund due pursuant to subdivision (3) of subsection 1 of this section.

407.568. No motor vehicle returned by a consumer or motor vehicle lessor in this
2 state pursuant to section 407.567, or by a consumer or motor vehicle lessor in another state
3 under a similar law of that state, may be sold or leased again in this state unless full
4 disclosure of the reasons for return is made to any prospective buyer or lessee.

407.570. 1. The department of revenue shall refund to the manufacturer any sales
2 tax which the manufacturer refunded to the consumer pursuant to section 407.567 if the
3 manufacturer provides to the department of revenue a written request for a refund along
4 with evidence that the sales tax was paid when the motor vehicle was purchased and that
5 the manufacturer refunded the sales tax to the consumer.

6 2. The department of revenue shall refund to a consumer pursuant to section
7 407.567 all or part of the sales tax paid by the consumer on the purchase of a new motor
8 vehicle, based on the amount of the refund of the purchase price of the motor vehicle
9 actually received by the consumer, if all of the following apply:

10 (1) The consumer returned the motor vehicle to its manufacturer and received a
11 refund of all or part of the purchase price but not the corresponding amount of sales tax;

12 (2) The consumer bought the new motor vehicle after the effective date of this

13 section;

14 (3) The consumer provides the department of revenue with a written request for
15 a refund of the sales tax along with evidence that the consumer received a certain amount
16 as a refund of the purchase price of the motor vehicle from the manufacturer, that the sales
17 tax was paid when the motor vehicle was bought new and that the manufacturer did not
18 refund the sales tax to the consumer; and

19 (4) The department of revenue has not made a refund pursuant to subsection 1 of
20 this section in connection with the same motor vehicle.

407.571. It shall be presumed that a reasonable number of attempts have been undertaken
2 to conform a new motor vehicle to the applicable express warranties if within the terms,
3 conditions, or limitations of the express warranty, or during the period of [one year] **eighteen**
4 **months** following the date of original delivery of the new motor vehicle to a consumer, **or**
5 **before the new motor vehicle's odometer accurately indicates that the vehicle has traveled**
6 **eighteen thousand miles**, whichever expires earlier, either:

7 (1) The same nonconformity has been subject to repair [four] **three** or more times by the
8 manufacturer, or its agents, and such nonconformity continues to exist; or

9 (2) The new vehicle is out of service by reason of repair of the nonconformity by the
10 manufacturer, through its authorized dealer or its agents, for a cumulative total of thirty or more
11 [working] days, exclusive of down time for routine maintenance as prescribed by the
12 manufacturer, since delivery of the new vehicle to the consumer. The thirty-day period may be
13 extended by a period of time during which repair services are not available to the consumer
14 because of conditions beyond the control of the manufacturer or its agents.

407.573. 1. The terms, conditions, or limitations of the express warranty, or the period
2 of [one year] **eighteen months** following the date of original delivery of the new motor vehicle
3 to a consumer **or eighteen thousand miles, or before the new motor vehicle's odometer**
4 **accurately indicates that the vehicle has traveled eighteen thousand miles**, whichever expires
5 earlier, may be extended if the new motor vehicle warranty problem has been reported but has
6 not been repaired by the manufacturer, or its agent, by the expiration of the applicable time
7 period.

8 2. The manufacturer shall provide information for consumer complaint remedies with
9 each new motor vehicle. It shall be the responsibility of the consumer, or his representative,
10 prior to availing himself of the provisions of sections 407.560 to [407.579] **407.581**, to give
11 written notification to the manufacturer of the need for the repair of the nonconformity, in order
12 to allow the manufacturer an opportunity to cure the alleged defect. The manufacturer shall
13 immediately notify the consumer of a reasonably accessible repair facility of a franchised new
14 vehicle dealer to conform the new vehicle to the express warranty. After delivery of the new

15 vehicle to an authorized repair facility by the consumer, the manufacturer shall have ten calendar
16 days to conform the new motor vehicle to the express warranty. Upon notification from the
17 consumer that the new vehicle has not been conformed to the express warranty, the manufacturer
18 shall inform the consumer if an informal dispute settlement procedure has been established by
19 the manufacturer in accordance with section 407.575. However, if prior notice by the
20 manufacturer of an informal dispute settlement procedure has been given, no further notice is
21 required.

22 3. Any action brought under sections 407.560 to [407.579] **407.581** shall be commenced
23 within six months following expiration of the terms, conditions, or limitations of the express
24 warranty, or within eighteen months following the date of original delivery of the new motor
25 vehicle to a consumer, whichever is earlier, or, in the event that a consumer resorts to an
26 informal dispute settlement procedure as provided in sections 407.560 to [407.579] **407.581**,
27 within ninety days following the final action of any panel established pursuant to such procedure.

407.577. 1. If a consumer undertakes a court action after complying with the provisions
2 of sections 407.560 to 407.579 and finally prevails in that action, he shall be allowed by the court
3 to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses,
4 including attorney's fees based on actual time expended, determined by the court to have been
5 reasonably incurred by the plaintiff for or in connection with the commencement and prosecution
6 of such action.

7 2. If any claim by a consumer under sections 407.560 to 407.579 is found by a court to
8 have been filed in bad faith, or solely for the purpose of harassment, or in the absence of a
9 substantial justifiable issue of either law or fact raised by the consumer, [or for which the final
10 recovery is not at least ten percent greater than any settlement offer made by the manufacturer
11 prior to the commencement of the court action,] then the consumer shall be liable for all costs
12 and reasonable attorney's fees incurred by the manufacturer, or its agent, as a direct result of the
13 bad faith claim.

14 **3. In addition to pursuing any other remedy, a consumer may bring an action to**
15 **recover damages caused by a violation of sections 407.560 to 407.581. A court shall award**
16 **a consumer who prevails in such an action twice the amount of any pecuniary loss, together**
17 **with costs, disbursements and reasonable attorney's fees, and any equitable relief the court**
18 **deems appropriate.**

407.579. 1. Except as provided in subdivision (1) of section 407.560, nothing in sections
2 407.560 to 407.579 shall in any way limit the rights or remedies which are otherwise available
3 to a consumer at law or in equity.

4 2. [Sections 407.560 to 407.579 shall apply to any new motor vehicle sold after January
5 1, 1985.] **Any waiver by a consumer of rights pursuant to sections 407.560 to 407.581 is**

6 void.

7 **3. In addition to pursuing any other remedy, a consumer may bring an action to**
8 **recover for any damages caused by a violation of this section. The court shall award a**
9 **consumer who prevails in such an action twice the amount of any pecuniary loss, together**
10 **with costs, disbursements and reasonable attorney's fees, and any equitable relief the court**
11 **determines appropriate.**

407.580. 1. All manufacturers shall make available to consumers who purchase
2 **new motor vehicles in this state all technical service bulletins and safety recall notices**
3 **applicable to new motor vehicles the manufacturer produces.**

4 **2. All manufacturers shall establish and maintain consumer information systems**
5 **by telephone hotline or by interactive web site. Such system shall provide access to all**
6 **technical service bulletins and safety recall notices for motor vehicles manufactured by the**
7 **manufacturer, identifiable by vehicle identification number. Manufacturers shall furnish**
8 **the consumer of new motor vehicles purchased from dealers with the telephone number**
9 **or Internet Web site from which such technical service bulletins and safety recalls or**
10 **indexes thereof can be obtained.**

11 **3. If a motor vehicle dealer has been informed of a safety recall, the motor vehicle**
12 **dealer shall disclose to any consumer seeking repairs of the recall and its terms and**
13 **conditions.**

14 **4. Manufacturers shall provide notice, by first class mail, to all reasonably**
15 **ascertainable consumers of new motor vehicles, of any safety recall affecting any motor**
16 **vehicle the manufacturer has produced.**

407.581. 1. As used in this section, the term "adjustment program" shall mean an
2 **extended policy program under which a manufacturer undertakes to pay for all or any**
3 **part of the cost of repairing, or to reimburse purchasers for all or any part of the cost of**
4 **repairing, any condition that may substantially affect motor vehicle durability, reliability**
5 **or performance. "Adjustment program" does not include service provided under a written**
6 **warranty provided to a consumer, service provided under a safety or emission-related**
7 **recall program or individual adjustments made by a manufacturer on a case-by-case basis;**

8 **2. A manufacturer shall do all of the following:**

9 **(1) Establish a procedure to inform a consumer of any adjustment program**
10 **applicable to the consumer's new motor vehicle and, upon request, furnish the consumer**
11 **with any document issued by the manufacturer relating to any adjustment program;**

12 **(2) Notify, by first class mail, a consumer who is eligible under an adjustment**
13 **program of the condition in the new motor vehicle that is covered by the adjustment**
14 **program and the principal terms and conditions of the adjustment program within ninety**

15 days after the date on which the adjustment program is adopted;

16 (3) Notify its motor vehicle dealers, in writing, of all the terms and conditions of an
17 adjustment program within thirty days after the date on which the program is adopted;

18 (4) If a consumer is a purchaser or lessor of a new motor vehicle, notify the
19 consumer, in writing, of the consumer's rights and remedies pursuant to this section. The
20 notice shall include a statement in substantially the following language: "Sometimes
21 (manufacturer's name) offers a special adjustment program to pay all or part of the cost
22 of certain repairs beyond the terms of the warranty. Check with your motor vehicle dealer
23 to determine whether any adjustment program is applicable to your motor vehicle."; and

24 (5) Establish and maintain consumer information systems by telephone hot line or
25 interactive Web site. Such system shall provide access to all adjustment programs for
26 motor vehicles manufactured by the manufacturer, identifiable by vehicle identification
27 number. Manufacturers shall furnish the consumer of new motor vehicles purchased from
28 dealers with the telephone number or Web site from which information or adjustment
29 programs or indexes thereof can be obtained.

30 3. If a motor vehicle dealer has been informed of an adjustment program pursuant
31 to this section, the motor vehicle dealer shall disclose to any consumer seeking repairs for
32 a condition covered by the adjustment program the terms and conditions of the adjustment
33 program.

34 4. A manufacturer who establishes an adjustment program shall implement
35 procedures to assure reimbursement of each consumer eligible under an adjustment
36 program who incurs expenses for repair of a condition subject to the program before
37 acquiring knowledge of the program. Reimbursement shall be consistent with the terms
38 and conditions of the particular adjustment program.

39 5. A consumer shall make a claim for reimbursement pursuant to this section, in
40 writing, to the manufacturer within two years after the date of the consumer's payment for
41 repair of the condition. The manufacturer shall notify the consumer within twenty-one
42 business days after receiving a claim for reimbursement if the claim will be allowed or
43 denied. If the claim is denied, the specific reasons for the denial shall be stated in writing.

Section B. Section A of this act shall become effective on January 1, 2003.